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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,613	05/10/2001	Dietrich Reichwein	11004/005	5882
27879 7590 01/05/2004 BRINKS HOFER GILSON & LIONE ONE INDIANA SQUARE, SUITE 1600 INDIANAPOLIS, IN 46204-2033			EXAMINER BEISNER, WILLIAM H	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,613

Applicant(s)

REICHWEIN ET AL.

Examiner

William H. Beisner

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-12, 16, 29-36, 38 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13, 14, 17-28, 37 and 39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of V, claims 14, 15, 17-28, 37 and 39 in the response dated 26 Sept. 2003 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 1-13, 16, 29-36, 38 and 40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the response dated 26 Sept. 2003.

Priority

3. Applicant is advised of possible benefits under 35 U.S.C. 119(a)-(d), wherein an application for patent filed in the United States may be entitled to the benefit of the filing date of a prior application filed in a foreign country.

Note the instant declaration does not claim priority to German applications listed on the WO/01/34096.

Information Disclosure Statement

4. The information disclosure statement filed 09 July 2001 has been considered and made of record.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 14, 15, 17-28, 37 and 39 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a credible asserted utility or a well established utility.

The claimed invention asserts a utility of “controlling biological systems with an apparatus for **generating scalar electromagnetic fields** in response to a data signal”.

The instant specification discloses that devices for generating **scalar electromagnetic fields** are known (See page 9, line 31 to page 11, line 21). Specifically, the instant specification alleges that the coils disclosed generate scalar electromagnetic fields and/or electromagnetic longitudinal waves for controlling biological systems. The instant specification discusses the theoretical existence of scalar electromagnetic fields and longitudinal waves and concludes that biological cells generate and respond to “scalar waves” (See pages 2-5). As a result, the instant invention is alleged to control biological systems using a device for generating scalar waves in response to scalar waves emitted by the biological systems.

In view of the evidence set forth below, the Examiner is of the position that the asserted utility in the instant application is not credible to a person of ordinary skill in the art.

The reference of Bhaumik (Physics Letters) discusses the theoretical possibility of “coherent modes” in biological systems but concludes that ‘much theoretical and experimental work is needed in order to clarify and sharpen the physical ideas involved’ (See page 148).

The reference of JLN Labs discloses a bifilar coil construction for generating scalar waves but employ language such as “may be generated” and “could be generated”.

The reference of Bruhn (Abstract from the Journal Scientific) concludes that Meyl’s assertion of the existence of scalar waves “clearly contradict a well-known theorem of the mathematical theory of the wave equation”.

The reference of Waser (Web publication) concludes that the experiment of Meyl do not prove the existence of scalar waves (See page 10).

The reference of Jones et al.(Abstract of Bioelectromagnetics) concludes that normal laboratory environment produce the same exposure conditions that a bifilar coil device generates.

The reference of Wey et al. (Abstract of Environmental Health Perspectives) concluded that it could not be conclusively shown that cells respond to a bifilar device.

The reference of Nationmaster.com Encyclopedia discusses magnetic monopoles which alleged to be generated by bifilar or Klein coils and states that they are “hypothetical” and attempts to detect their existence have not been successful.

The reference of Vlaenderen (The revealed secrets of classical electrodynamics) discloses in the acknowledgment section on page that that published papers on the subject of scalar waves have been peer reviewed by physicists and shown to include mathematical mistakes and wrong conclusions.

In view of the totality of the evidence discussed above, one of ordinary skill in the art would not find the alleged utility of controlling biological systems with an apparatus for **generating scalar electromagnetic fields** in response to a data signal to be credible since the existence of scalar fields as shown in the evidence above is theoretical at best.

7. Claims 14, 15, 17-28, 37 and 39 also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a credible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Note the instant specification is devoid of any working examples other than the building of a Klein coil. The instant claims encompass a device and method of use for controlling biological systems with an apparatus for **generating scalar electromagnetic fields** in response to a data signal. In view of the state of the art as discussed in the 35 USC 101 rejection above, while one of ordinary skill in the art may be capable of building a Klein coil and exposing cells to the field generated by the coil, undue experimentation would be required to make and/or use the device in terms of the device for detecting scalar or longitudinal waves generated by the biological systems, how a data signal is generated and/or used to control the coil for generating the treatment scalar waves and/or the conditions required to successfully control a biological systems as required by the claims.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 13, 14, 17-28, 37 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claims 13 and 37, recitation of "in response to a data signal" is vague and indefinite. The metes and bounds of the claims are not clear in the absence of further clarity as to what the data signal is and how it correlates to the generated scalar waves.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 703-308-4006 (571-272-1269 after 12/16/03). The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:40am to 4:10pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920 (571-272-1281 after 12/16/03). The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


William H. Beisner
Primary Examiner
Art Unit 1744

WHB